

THE INTERDEPENDENCE OF LAW AND SOCIETY

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Law and society cannot be seen as two individual entities without drawing parallels between the two, they, as concepts are deeply embedded into one another.¹ Law, in extremely simple terms, can be defined as a “set of rules and regulations that are applicable on a set of people that living in a defined territory”; and people make society, it can therefore be said that law is a mechanism to regulate conduct in the society.

Since time immemorial, the law has been carefully crafted according to the society on which it is imposed. This is the very reason why the laws, rules and regulations differ from one country to another. Let alone a country, India itself does not have a Uniform Civil Code which implies that the laws differ from one place to another. For example, the MLDA (Minimum Legal Drinking Age) in India is mostly 25 years whereas, in more than 17 countries around the world which include Panama, Zimbabwe and Serbia among others, MLDA is as low as 16 years.² This is the most basic example of laws differing across the globe according to the subjects or “society” that comprises the territory on which laws are imposed. It can therefore be concluded that society is the crux when it comes to the creation and more importantly, the sustainment of law.

The transformation of law is dependent upon the society on which it is directed, i.e. society changes law. It is the people for which the laws are created and therefore, it is the people which influence change in-laws. To illustrate this further, the evidence to substantiate the statement is as follows.

- 1. Incidents in Society-** Vishakha & Other v State of Rajasthan³ [Vishakha Guidelines (Deals with sexual harassment in the Workplace)]
- 2. Change in society -** Homosexuality (“Decriminalization of section 377 of the Indian Penal Code”)

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¹THE OXFORD HANDBOOK OF POLITICAL SCIENCE, Lynn Mather. Edited by Robert E. Goodin, Law and Society {Print Publication Date:Jul 2011 Subject:Political Science, Law and Politics Online Publication Date:Sep 2013 DOI:10.1093/oxfordhb/904.013.0015}

²World Population Review

³Vishakhav State of Rajasthan &Ors. 1997 6 SCC 241

VISHAKHA GUIDELINES

In Bhanwari Devi's case, who was an Indian social activist from a small locale in Rajasthan, the activist was brutally raped by the men of the "upper class" who were angered by the fact that she tried to prevent an underage marriage in the family of those men.⁴ After suffering through this unexplainable and brutal pain, when she approached the police, she not just faced victim-blaming but also had to go through a very difficult line of questioning. She mentioned the five males in her police report: brothers "Ram Sukh Gujjar", "Gyarsa Gujjar", and "Ram Karan Gujjar", the latter of whom she tried to prevent from marrying his daughter as a child, and their uncle Badri Gujjar, as well as one Shравan Sharma. Badri and Gyarsa allegedly took turns rapping her as Ram Sukh held her. She went on to say that the rape happened not long after the encounter. The accused from the Gurjar caste were caught and prosecuted in court, but they were supported by Dhanraj Meena, a local MLA. Purohit was engaged by Meena to represent the accused.

This, however, was in no way an end to her troubles, she further face injustice during her medical procedures wherein the Primary Health Centre did not agree to do her medical examination and also wrote in his report that the victim was sent for the "determination of her age". The evidence however suggested there was in fact traces of six men's semen. The district and sessions court in Jaipur dropped the case and acquitted all five defendants on November 15, 1995. Five judges were replaced, and the accused were found not guilty by the sixth judge, who stated, among other things, that Bhanwari's husband could not have quietly watched his wife being gang-raped. The State Government decided to appeal the ruling after being pressured by women's organizations. The decision sparked a nationwide push for Bhanwari Devi's justice. However, after more than a decade (15 years) of the occurrence, the Rajasthan High Court had only heard the case once, and two of the defendants had died.

This case had a humongous impact on the women's movement in the country and helped more victim-survivors to speak up against their rapists and initiate formal legal proceedings. This case led to the formation of one of the most landmark decisions- "The Vishaka Guidelines". Several groups got together to file a PIL against the state of Rajasthan and the UOI under the umbrella name of "Vishaka". Supreme Court's judgment of this in 1997 provided for the first time the definitions of sexual harassment faced in the workplace and

⁴ Dalrymple, William "The sad tale of Bahveri Devi" *The Age of Kali: Indian Travels and Encounters*. Penguin Books India page 97-110. ISBN 978-0-14-393109-3

provides measures or “guidelines” to deal with it. This was a prominent change in the lives of women and a revolutionary judgement. In this case, it was through the constant efforts of the members of the society that actively took the change and worked towards bringing about an extremely necessary addition to the law. This case actively substantiates the statement that society brings about change in the law.

THE DECRIMINALISATION OF SECTION 377 (THE HOMOSEXUALITY CASE)

In the case of Naz Foundation v. Govt. of NCT of Delhi, the Delhi High Court ruled that section 377 of the Indian Penal Code was unconstitutional and was struck down. The court ruled that “it was against the individual’s rights to equality, freedom and was discriminatory” thereby violating Articles 14, 15 and 21. However, in 2013 this decision was reversed by the Supreme Court by a bench comprising of two judges in the case of Suresh Kumar Koushal and others v Naz Foundation and others. In this case, Suresh Kumar Koushal who is an astrologer claimed that this is an outrageous judgement by the Delhi High Court because it was unnatural, against the Indian culture and above all, immoral.⁵ Further, the SC terminated the “Review Petition” filed by Naz Foundation on January 28, 2014, against its aforementioned decision.

A writ petition was filed in 2016 which contested the constitutionality of section 377. Finally, in 2018, in the case of Navtej Singh Johar v. Union of India⁶, the Supreme Court overturned its decision in the case of Suresh Kumar Koushal. In this case, Supreme Court decriminalized section 377 of IPC to the extent to which it referred to the consensual sexual intercourse between two adults of the same sex. It did keep the provision of the section which related to sexual intercourse with minors and cruelty against animals, this part remains criminalized for good. On 6th September 2018, a landmark judgement was delivered by the apex court of India which only began to compensate the community for the mental, social, emotional, physical and legal discrimination that they went through in this long fight to attaining their rights. It was rightly said by Hon’ble Justice Indu Malhotra in her judgement that "History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries. The members of this community were compelled to live a life full of fear of reprisal and persecution. This was on account of the ignorance of the majority to recognise that

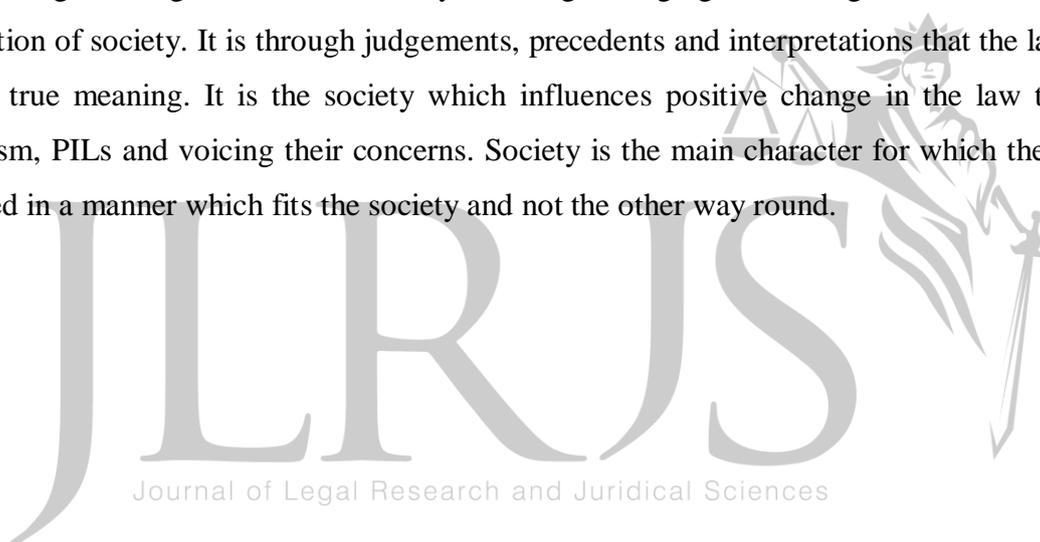
⁵*Suresh Kumar Koushal and others v. Naz Foundation and others* (Supreme Court of India 2013)”

⁶Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

homosexuality is a completely natural condition, part of a range of human sexuality."⁷ This case is another example of how changes in society bring about changes in the laws of the country. With changing times, homosexual relationships became common among people and eventually, the law which was against the general course of people and the nature of relationships that they were involved in was transformed.

CONCLUSION

The grave influence that society as a whole has on law is evident from the two cases mentioned above. Society plays an integral role in determining how the future of the laws are shaped because it is the society on which these laws, rules and regulations are imposed therefore, they are the true judges of determining what is in correspondence with them. Law is anything but stagnant, it is constantly evolving, changing and taking new forms with the evolution of society. It is through judgements, precedents and interpretations that the laws are given true meaning. It is the society which influences positive change in the law through activism, PILs and voicing their concerns. Society is the main character for which the law is created in a manner which fits the society and not the other way round.



⁷ *Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice, W. P. (Crl.) No. 76 of 2016 (Supreme Court of India)*